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SUMMARY RECORD OF THE 403rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 September 1997, at 3 p.m.

Chairperson: Miss MASON

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Australia (CRC/C/8/Add.31 (English only); CRC/C/Q/AUS/1)

1. At the invitation of the Chairperson, Mr. Moss, Mr. Campbell, Ms. Calvert, Ms. Sheedy, Ms. Stanford, Mr. Frost, Mr. Conroy and Mr. Taylor (Australia) took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation of Australia and invited it to introduce the initial report of the Australian Government (CRC/C/8/Add.31).

3. Mr. MOSS (Australia) said that Australia had ratified the Convention in 1990, submitted its report in 1996 and replied to the Committee's questions in 1997.

4. Australia, a country which cherished democracy, the rule of law and tolerance, staunchly defended human rights, including the rights of children. The federal system of government was fundamental to the implementation of the Convention, since powers not specifically conferred on the Federal Government by the Constitution came under the jurisdiction of State Governments and parliaments. Their active participation and cooperation was therefore vital.

5. The Government acknowledged the central importance of children in Australian society, but its role was not prescriptive or determinant. It did, however, recognize that, in the absence of a stable family environment, intervention might be necessary in the child's best interests. Despite the restructuring of the Australian economy, the Government was still committed to providing an overall safety net for families. There were a number of issues affecting children and young people that were of critical concern both to the community and to the Government.

6. The Government thus gave high priority to tackling youth unemployment through training schemes and by making education more relevant to the needs of young people and employers and by providing a less complex income support system which encouraged young people to live at home while studying or training.

7. Despite its wealth and opportunities, Australia had an unacceptably high youth suicide rate, the precise causes of which were unknown, but risk factors included mental illness and drug or alcohol abuse. The Federal Government had given considerable funds to the National Youth Suicide Prevention Strategy, which consisted of support and parenting programmes; education and training for health professionals; and research. In order to combat youth homelessness, the Prime Minister had set up a Youth Homeless Task Force to investigate relevant issues and provide advice on a pilot programme. Projects funded under the programme would be evaluated in 1998.

8. Recurrent expenditure on child care was expected to grow at a real average rate of about 3 per cent per year and was intended to help protect the most disadvantaged families. The Government had developed a seven-point plan

to raise Australia's extremely low immunization rates to ensure that 90 per cent of all children under 2 and virtually all children starting school were fully immunized by the year 2000.

9. The Government was particularly concerned about the health, well-being and education of indigenous children. The disadvantages experienced by those children required particular approaches to make sure that they had access to services of an equivalent standard to those enjoyed by their non-indigenous contemporaries. A number of health strategies had been worked out to that end. Furthermore, the Federal Government had convened a Ministerial Summit on Aboriginal Deaths in Custody, at which it had been agreed that a coordinated approach should be established to address the causes of high rates of indigenous incarceration and deaths in custody.

10. His Government was naturally aware of suggestions that a national mechanism should be set up to supervise the implementation of the Convention and coordinate a policy on children, but, as an array of existing mechanisms already achieved the desired result, it was loath to spend scarce resources on another layer of bureaucracy and unconvinced that that would improve the protection of Australian children. Its stance was, however, open to review. It would be guided by the recommendations made by a variety of national bodies and it would take careful note of the Committee's views on the subject.

11. Mr. KOLOSOV said he was worried about the fact that State Governments in Australia had sweeping powers and many decisions did not lie in the hands of the Federal Government. In view of the difficulties which had arisen in the Russian Federation because of a similar situation, he was concerned about the absence of a unified policy on children. Had that issue been discussed? Was there a desire for closer coordination?

12. Mrs. KARP asked why the external territories had not been covered by the report, as they should have been in accordance with article 2 of the Convention. Since Australia's reservation concerning the incarceration of adults and children together was not a matter of principle, but based on practical and/or financial considerations, she would have expected the Federal Government to prevail on States to introduce a plan of action to rectify the situation and thus enable Australia to withdraw its reservation. She strongly urged the Government to reconsider its position. While she understood the problems inherent in the relationship between Federal and State Governments, she felt that the Federal Government should play a more active leadership role when State laws or practices conflicted with the Convention. She emphasized that it made no difference where children lived in Australia; if rights protected by the Convention were infringed, the victim was entitled to redress. She urged that a more holistic approach should be adopted. A national coordinating body would be the best means of ensuring that programmes did not overlap and of improving the implementation of the Convention with the available financial and manpower resources.

13. Mrs. PALME said that, in times of budgetary stringency, a coordinating body was needed to economize resources and see to it that they went to those in greatest need. As a psychologist, she was strongly opposed to corporal punishment. Research findings in Sweden had demonstrated the harmful effects of hitting children. It did not teach them to be responsible citizens and, if

they became withdrawn and isolated from society, they might ultimately try to commit suicide. Vulnerable members of society needed protection, especially during difficult times.

14. Mrs. OUEDRAOGO said she regretted that Australia was not prepared to review its reservation and deplored the fact that adults and children were imprisoned together, as that situation could have very adverse consequences on the development of children.

15. She asked how the implementation of the Convention in Australia could be guaranteed if its provisions were not incorporated into internal law. What status did the Australian Government give to the treaties to which it was a party? Was the Convention well received by the population, above all children, and what use did they intend to make of it?

16. The CHAIRPERSON asked why the Joint Parliamentary Committee on Treaties was needed, whether it had made any specific reference to the Convention and what impact it had on the operation of the Convention in Australia. A department of the Foreign Ministry was responsible for the preparation and collation of reports to human rights treaty bodies, but the Convention provided for a measure of popular participation in the preparation of reports relating to it. Why had the Australian Government not sought information from non-governmental sources for inclusion in the report? Why had input from NGOs not been included in the report from the outset? Would account be taken of the NGO community's views in future reports? Would children be able to participate in the process, as provided for in the Convention?

17. Mr. MOSS (Australia), replying to the question raised by Mr. Kolosov, said it was inevitable that, under Australia's federal constitution, many of the most important services for children should be decided on and provided by State and territory Governments. It was thus essential that the approach to the Convention should be one of cooperation between the federal and State levels, since otherwise it would simply not be possible for the Federal Government to undertake its implementation. That was why all State Governments had been involved in the process whereby Australia had originally become a party to the Convention. In the course of that process, all States had examined their legislation to determine whether it was in conformity with the Convention and had made any necessary changes. The situation was thus not one of conflict, but rather one of coordination and consultation.

18. Ms. CALVERT (Australia) said Australia's view was that, by having all seven States and territories involved in the reporting process, the Committee would get a better picture of the real situation of children in the country. The different ways in which the various States and territories fulfilled their obligations meant that the unique character of each could be taken into account: for example, the Northern Territory had a different system from that of New South Wales because of differences in its geographical structure and population patterns.

19. Coordinating mechanisms were already in place in Australia which enabled information to be exchanged between States and territories, for instance to ensure that no one with a record of sex offences was employed in child care.

Her delegation would prefer the Committee to focus on whether or not Australia was fulfilling its obligations under the Convention rather than on the ways and means it employed to achieve that end.

20. Mr. MOSS (Australia), replying to a point raised by Mrs. Karp, said that in fact Australia's external territories were also covered by the Convention. His Government would be considering the issue of a national coordinating mechanism in the light of the relevant reports made to it, including the Committee's own report, but, as had already been pointed out, a number of such mechanisms already existed at the State and territory levels to permit coordination and consultation in important areas of policy and to prevent duplication of effort.

21. Corporal punishment, either in schools or in the family, was another issue that was regulated at the State and territory levels rather than at the Federal Government level. The Federal Government would intervene only if it considered that current practices in that respect were in breach of the Convention.

22. Ms. CALVERT (Australia) said that the Government of New South Wales had recently passed a law prohibiting corporal punishment in all schools. The defence of "reasonable chastisement" could be invoked in law in cases brought for assault and a bill had recently been introduced in Parliament to codify that defence and to define "unreasonable chastisement". That would have the effect of regulating the extent to which children could be disciplined using physical force.

23. Where corporal punishment in the home was concerned, research had shown that a majority of parents believed that reasoning with a child was preferable to physical punishment, but views differed as to whether parents should be banned from using such punishment. The dilemma facing the country was how to reconcile opposition to changing the law on the matter with the widespread desire to see more positive disciplinary measures adopted.

24. Mr. MOSS (Australia), replying to the question on Australia's reservation to article 37 (c) of the Convention, stressed that the problem was not simply one of resources. While there was no disagreement with the principle embodied in the article, the fact was that, in some remote areas of the country, it was simply not possible to separate children deprived of their liberty from adults because of the smallness of the communities and their distance from detention centres of any size. The provision of separate facilities could result, in practice, in young people being held in solitary confinement. Because it was unlikely that those difficulties could be overcome in the near future, Australia could not yet contemplate withdrawing its reservation.

25. Ms. CALVERT (Australia), citing further examples of cases in which children in detention were not separated from adults, said that juveniles in detention who reached the age of 18 would usually not be moved into an adult jail, since it was considered that the detention centre would better meet their needs. Likewise, children who had been born to women prisoners would be kept in the same institution as their mothers.

26. Mr. MOSS (Australia), referring to the issue of the incorporation of the Convention into Australian law, pointed out that conventions acceded to by his Government were not self-executing: they were, rather, regarded as monitoring documents. The legal status of such documents was to inform the legislative and executive processes and to assist the courts in interpreting the relevant legislation.

27. However, the recent High Court decision in the Teoh case had raised some new issues. The court's finding in that case had been that Australia's accession to a treaty gave rise to a legitimate expectation in administrative law that the Government and its agencies would act in accordance with the terms of that treaty, even if those terms had not been incorporated into internal law. The legitimate expectation in the case had been that the best interests of the child would be the primary consideration in deciding whether or not to deport the individual concerned. However, the Court had made it clear that such an expectation could be set aside by the Government, either by legislation or by an executive act. It was long-standing practice in his country that the provisions of a treaty to which Australia was a party did not form part of Australian law unless they had been validly incorporated. Under the Constitution, the Government had power to make Australia party to a treaty, but only Parliament had power to change the law.

28. The present Government had in fact introduced a bill setting aside expectations arising out of all treaties, whether past or future: that bill was currently before Parliament. The Government believed that any extension of the doctrine of legitimate expectations under treaties would upset the proper balance between the role of the executive and the role of Parliament. It was also concerned that administrative decisions might be challenged on the grounds of failure to respect international obligations, even where those obligations were not really relevant to the decision concerned. Application of the Teoh principle would mean that a decision could be set aside even when the decision maker and the person affected by the decision had had no knowledge of the relevant obligation at the time of the decision. In short, the Teoh case was seen as having introduced a new concept into Australian law regarding the use to which unincorporated treaties might be put. It was important to realize, however, that, even in the absence of statutory provisions, relevant treaty obligations could be taken into account by decision makers, although in general Australia's approach was to ensure that its legislation, policies and practices complied with a treaty before it proceeded to ratify it.

29. On the question of how the Convention was regarded in Australia, he said that its provisions would of course be familiar to government departments responsible for services to children or for policies affecting them, as well as to non-governmental organizations in the field. The Australian public, for its part, would probably not have detailed knowledge of the Convention, since the rights embodied in it were generally regarded as being guaranteed by Australia's system of government rather than as arising out of international instruments.

30. Ms. CALVERT (Australia), referring to examples of how the Convention was being implemented, said that New South Wales had recently revised both its primary and secondary school curricula to include a study of the Convention.

In addition, the Department of Education had issued schools with background material on the Convention, as well as lists of activities designed to help children understand and apply their rights in a variety of contexts. In the field of law, recent amendments to juvenile justice legislation had introduced a new set of guiding principles for dealing with young offenders relating specifically to article 40, paragraph 4, of the Convention. Work was also being done in New South Wales to increase children's participation in decisions affecting them, notably in agency policy-making through the funding of peer advocacy groups. Similar efforts to use the Convention in a constructive way were also being made in other States and territories.

31. Mr. MOSS (Australia) explained that, while, at the federal level, there were no specific programmes for educating the community about the Convention, efforts were being made to raise awareness of the rights and obligations of all members of society. The Government had recently announced a new civics programme entitled "Discovering Democracy", designed to give students a better understanding of Australia's system of government and of the relationship between Australian and international law.

32. Mr. TAYLOR (Australia), explaining the role of the Joint Parliamentary Committee on Treaties, said the reason that the Committee had been set up was that it had been felt that ordinary Australians were not being sufficiently consulted in the treaty-making process. As from June 1996, any treaty, convention or protocol signed by the Government would immediately be tabled for discussion in both houses of Parliament and a "national interest analysis" would be carried out in order to gauge the interest of the Australian public, and particularly of non-governmental organizations, in the instrument concerned. He stressed that, in Australia, there was a division of powers between the executive, Parliament and the judiciary and it was essential to ensure that Parliament was closely involved before the executive took a final decision.

33. The Joint Parliamentary Committee was an entirely independent body which had the power to review any treaty to which Australia was a party. In the case of the Convention on the Rights of the Child, it had decided to launch an inquiry to gauge the public's reaction and to see what progress had been achieved in implementing the Convention's provisions. One view that still prevailed was that the Convention placed too much emphasis on the rights of children and too little on the responsibilities of parents and his Committee was in the process of preparing a comprehensive report which would reflect that view, as well as the views of other sectors of the community.

34. In reply to the question raised by the Chairperson, he said that the Committee had had as many as 1,500 submissions from non-governmental organizations, and that indicated that they played an important role in the consultative process. He hoped that the Joint Committee's report, as well as the report on the Committee's own deliberations, would help to dispel any remaining misconceptions about the Convention's significance.

35. Ms. FROST (Australia), supplementing the information given in the written reply to question 6 of the list of issues (CRC/C/Q/AUS/1), said that the Australian Government, recognizing that the Committee, like other human rights treaty bodies, was interested in input to the reporting process from

non-governmental organizations, had, when starting to prepare its first report, asked each of the States and territories to consult the non-governmental organizations within their jurisdiction. That had been considered an appropriate procedure because much of the primary responsibility for the implementation of the Convention in Australia and a considerable part of the infrastructure for such implementation lay with the States and territories.

36. However, the results had been very uneven, indicating that that model of consultation was ineffective; because of lack of time the report had been completed without further consultation. Subsequently, the Federal Government had received a proposal on consultation with non-governmental organizations from the Australian branch of Defence for Children International. In response to that proposal, the Attorney-General's Department had contributed some A$ 12,000 towards the cost of consulting non-governmental organizations and preparing a report thereon. It was not, however, considered that that was necessarily the best method of ensuring consultation.

37. The Federal Government had also set up a national forum for non-governmental organizations, which had met in December 1996 and August 1997 and would meet again in December 1997. Reporting obligations were a standing item on the agenda; considerable discussion was being devoted to ways of ensuring consultation with non-governmental organizations in all areas of reporting to the various human rights treaty bodies, although no final model had as yet been determined.

38. In addition to the Attorney-General's Department, the Department of Foreign Affairs and Trade, which had set up its own non-governmental consultation forum, and the Department of the Prime Minister and Cabinet, which included the Office of the Status of Women and already had a well-established network of contacts with non-governmental organizations, were involved in reporting to various human rights treaty bodies and were actively considering how best to make consultation with non-governmental organizations part of that process.

39. Australia would welcome discussion with the Committee on how best to approach the preparation of its second report on the implementation of the Convention.

40. Mr. MOSS (Australia) said that the length of the initial report and the consequent difficulty of arranging for its translation would be borne in mind during the preparation of the second report.

41. Mrs. KARP, clarifying her earlier reference to the external territories, said she had not meant to imply that the Convention appeared not to be applicable to those territories. Her point had been that the report gave little information on the practical aspects of implementing the Convention in the external territories, since the information the report had given in relation to the States and territories did not apply to the external territories, as they had a different legal status. Although annexure 3 of the report had listed the applicable legislation, no details on such matters as practices, infrastructure, health programmes and others had been provided.

42. Australia's reservation on article 37 (c) of the Convention was unnecessary if the reason for not separating children from adults in detention was basically that it was in the best interests of the child, for example, to prevent the child from suffering as a result of being kept in solitary confinement. On the other hand, if the best interests of the child were not the determining factor in imprisoning adults and children together, then the reservation was justified.

43. With regard to the particularities of a federal system of government, it was the Federal Government that undertook, by ratifying the Convention, to ensure observance of the rights of children under the Convention. Such rights were expressed not merely in principles such as the right not to suffer discrimination on grounds of sex or race, but also in terms of equality of access to services or programmes that benefited children. In the various component states of a federal State, different traditions, practices, infrastructures, population patterns or even differences in the resources allocated to some services could lead to gaps in access to such benefits between different States. What was the position in Australia?

44. With reference to the Teoh decision, it had to be remembered that human rights conventions were in essence treaties between a State and its citizens and were thus quite different from treaties entered into by States among themselves. By ratifying a human rights convention, a State accepted its obligation to accord its citizens the rights it had undertaken to defend in ratifying the convention. Citizens were thus entitled to have those rights respected.

45. Under the present system whereby Australia had six Commissioners responsible for various aspects of human rights, the issue of children's rights had been somewhat compartmentalized by having different aspects dealt with by two different Commissioners. Because the various aspects of children's rights were interdependent, they would be better served by being dealt with as a whole. That could best be achieved by appointment of a further Commissioner with comprehensive responsibility for children's rights.

46. Mr. KOLOSOV, referring to the apparent conflict seen by some between parental authority and children's rights, said it was common for countries reporting to the Committee to assert that civil rights and the rights of the child were enshrined in their constitutions. Upon examination, however, those constitutions were found to refer to rights and freedoms only in the context of citizens or persons under the jurisdiction of the State concerned. In other words, it was in that category that children had access to the rights in question.

47. Since Australia was a party to many other human rights instruments, most of the rights provided for in the Convention were already enjoyed in Australia by every member of the population, including children, as there were few rights in the Convention not already covered in other international instruments. Hence parental authority could in no way be undermined by the Convention.

48. With regard to Australia's reservation to the Convention, separation of mothers from their infants could not be considered to come under the terms of article 37 (c), since such infants did not come under the category of persons deprived of liberty. There were, however, other reasons why failure to separate adults and children might be unavoidable. In the Russian Federation, for example, adult prisoners nearing the end of their term of imprisonment for a minor crime were often deliberately placed with young offenders because it was found that they would be listened to more readily than prison staff. In the Russian Federation, as in Australia, it was not always possible, because of the size and characteristics of the country, to send young offenders to prisons near their families. However, perhaps too much soul searching had gone into the question. Since the key principle in article 37 (c) was that whatever action was taken should be in the best interests of the child, the reservation might be considered unnecessary.

49. Mrs. OUEDRAOGO, referring to Mr. Taylor's statement, asked what difficulties of understanding had been encountered with regard to the Convention and how it was considered that they might be overcome. Perhaps an extensive campaign to create awareness of the principles and concepts underlying the Convention might be useful. Had any effort been made to bring the bodies responsible for implementation at the State level together at the federal level to ensure implementation was on course? If not, what measures were applied by the Federal Government to ensure such coordination?

50. Mrs. KARP said she was concerned that sectors of public opinion in Australia considered the Convention to represent an intrusion into family life and a threat to family values. For example, the fifth preambular paragraph and articles 5, 7, paragraph 1, 8, 11, 14, paragraph 2, 18 to 23 and 27, paragraphs 2 and 3, reflected the concern of the Convention to uphold the family and not to interfere in family life or to change the place of the child in the family. It was the duty of the State, by means of social and other programmes, to assist the family to fulfil its role with regard to the child. The Convention thus viewed the family as an essential and inseparable part of the rights of the child.

51. The CHAIRPERSON said that, since the final report of the Joint Parliamentary Committee would encapsulate the views of the Australian public on the Convention and have implications for it, the Committee would appreciate receiving a copy of the report when it became available.

52. Mr. MOSS (Australia), replying to Mrs. Karp's request, said that more detailed information on the situation with regard to children's rights in the external territories would be provided to the Committee.

53. The points made by Mrs. Karp and Mr. Kolosov on Australia's reservation to the Convention would be forwarded to the Federal Government for further consideration. One reason for the reservation had been the practical impossibility in the Australian environment of building separate prison facilities in all remote localities where the population was too sparse to warrant them.

54. With respect to Mrs. Karp's comments on practices in federal States, the question was not so much one of gaps in rights as of differences in approach. Under its Constitution, Australia was composed of a number of geographical areas, each of which could make its own decisions on how to deal with those issues over which it had been given authority. That did not mean that the provisions of the Convention were breached by any State in Australia, just that there were differences in the way they were implemented. Moreover, the ratification of the Convention by a unitary State did not necessarily preclude gaps in implementation.

55. The Federal Government believed that implementing the Convention in the context of cooperation between all the State and territory Governments improved rather than detracted from the effectiveness of implementation. That was because the infrastructure for implementation existed primarily at the State and territory levels; it was therefore important that those involved in the delivery of services should be consulted on and be committed to the implementation of the Convention.

56. With reference to the Teoh case, the Federal Government had considered that the High Court decision created an imbalance in the law, since the legislature elected by and representative of the citizens of Australia was being asked to take account of a treaty that had not been considered by that legislature.

57. The suggestion that it might be appropriate to appoint a Commissioner for the rights of the child had been superseded by a very recent decision of the Australian Government to reorganize and streamline the Human Rights and Equal Opportunity Commission, renaming it the Rights and Responsibilities Commission. Instead of six individual Commissioners, it would in future have a President and three Deputy Presidents, each with responsibility in one of three areas: sex discrimination and equal opportunity; human rights and disability discrimination; and Aboriginal and Torres Strait Islanders social justice and race discrimination. The role of the Privacy Commissioner would be separated from the Commission and established as a separate statutory office.

58. He agreed with the points made by Mr. Kolosov in relation to parental authority and children's rights and would refer them to the Federal Government. It was hoped that difficulties caused by gaps in the understanding of the Convention would be overcome both as a result of the present discussion and as a result of the work of the Joint Parliamentary Committee. As to coordination at the federal level, a final decision on a suitable mechanism had not yet been made; however, a number of coordinating mechanisms between the Federal Government and the State Governments already existed in various policy areas.

59. Ms. CALVERT (Australia) said that other coordination mechanisms existed at the State level, such as the recently established Office of Children and Young People in New South Wales, which reported directly to the Premier. Its role was to coordinate the policies and programmes of different government departments which affected children and young people. It also served as a focal point for children and young people and organizations representing them.

60. Furthermore, an independent and external children's commissioner was soon to be appointed in New South Wales. His duty would be to look into policy and programme coordination and the problem of how children's views could be better represented at various decision-making levels. Such initiatives, which might well be followed by other States, showed the value of the federal system in Australia.

61. Mr. TAYLOR (Australia), replying to comments concerning public perception of the Convention, said it was true that articles 12 to 16 of the Convention had frequently been referred to in some quarters as those which placed too much emphasis on the rights of children rather than on the rights and responsibilities of parents. He assured the Committee that it would receive the report in question as soon as possible. For obvious reasons, he was unable to reveal any details of the report before its finalization and submission to Parliament, which would probably be in early 1998. Suffice to say that, despite the diverging views of different parties, some areas of agreement were emerging. He would certainly welcome further dialogue with the Committee on the report in future.

62. Mr. KOLOSOV recalled that one of Australia's obligations under the Convention was international cooperation, namely, financial assistance to developing countries for the implementation of the instrument. He would welcome information on any mechanism employed by Australia to monitor the use and prevent the misuse of funds donated for that purpose. Such information might be found useful by other donor countries.

63. Mrs. KARP asked whether there was any policy to ensure that the bulk of funds donated were actually channelled into children's projects. On a different matter, she requested clarifications on the relevance of the Convention to the Human Rights and Equal Opportunities Act. Could the Convention be invoked in a court of law?

64. Mr. MOSS (Australia) said that it would be preferable if the question relating to international cooperation could be dealt with at a subsequent meeting by the Australian expert concerned, who was due to arrive in Geneva shortly.

65. Ms. SHEEDY (Australia), replying to Mrs. Karp, said that the Convention was one of the international instruments on which complaints addressed to the Human Rights and Equal Opportunities Commission could be based. However, such grounds for complaint did not necessarily make the act in question unlawful. It was only complaints based on gender, racial or disability discrimination - which came under the Human Rights and Equal Opportunities Act - that could give rise to court action where attempts at conciliation and hearings by the Commission failed. Complaints on other grounds covered by the Convention resulted in a political rather than a judicial process: following attempts at conciliation, a report was prepared for the Attorney-General and eventually submitted to Parliament. It was worth noting, nonetheless, that there was a tradition in Australian courts of referring to international instruments such as the Convention in the interpretation of domestic legislation.

66. The CHAIRPERSON said she still had some concerns about the Teoh decision. While she understood the Australian Government's right to remove loopholes from legislation, she feared its decision in the light of the Teoh case might amount to a nullification of the ratification process.

67. Mr. MOSS (Australia) said that he disagreed. All treaties to which Australia was party would be effective and be implemented in the same way as before, in other words, through the normal legislative processes at the Commonwealth and State levels. The only difference would be the nullification of the decision, which had previously had the effect of requiring administrative decision makers to consider all treaties irrespective of their legislative implementation.

68. Mrs. KARP suggested that the solution was for Australia to change its current ratification process rather than fail to fulfil the expectations of its citizens after having undertaken certain obligations under international treaties.

69. The CHAIRPERSON invited the Committee to ask any questions concerning the definition of the child and general principles (paras. 9 to 13 of the list of issues).

70. Mrs. KARP said that the right of children to express their views and participate in decision-making was a new concept which States parties would have to grapple with. It required not only specific legislation, but also appropriate government policies to ensure that the viewpoint of children was duly taken into account. In that connection, she recommended proper training of the professionals concerned on how to listen to children and adequate dissemination of information to explain the reasons for decisions taken affecting them.

71. Mrs. OUEDRAOGO said that, although many different age limits were mentioned in Australia's report, some important ones had been omitted. For instance there was no reference to the legal minimum age for employment, yet compulsory schooling ended at 15. Might that not entail a risk of child labour? She would also welcome more information on the legal age of marriage. Under what conditions could a child of 16 marry and were there differences between one State and another? Perhaps it would be useful to harmonize age limits at the federal level so as to monitor the situation more effectively. Noting that the age of criminal responsibility was 10, she said that she failed to understand how a 10 year old could be sentenced and inquired whether there was any prospect of that limit being raised.

72. Mr. MOSS (Australia) said that greater emphasis was now given to protecting the best interests of children and their participation through recent amendments to Australian family law, which provided for separate representation of children in proceedings where the court deemed it appropriate, as well as the integrated system of counselling, social work and reporting available to children in family law cases. The situation would be further improved by recent reforms which related to the provision of legal aid and would mean that more funding would undoubtedly be available for separate representation in future.

73. Ms. CALVERT (Australia), describing the situation at the State level in New South Wales, said the first aspect of child participation was their involvement in decision-making. At the individual level, research was under way into children in substitute care to find out how they felt about decisions which affected them directly. At the community level, there were several youth councils which met to discuss recreation, transport and employment facilities. Children also had a say in decisions concerning their education and schooling through the student representative councils which had been set up in most State high schools. As far as policy-making on a higher level was concerned, children between the ages of 12 and 25 were represented in the Youth Advisory Council which met on a regular basis with the State Premier to discuss issues affecting them.

74. The second aspect of child participation was advocacy. Apart from the Children's Commissioner and the Office of Children and Young People, another group which acted effectively on behalf of young people was the State network for children in care.

75. The third aspect of child participation was the right to lodge complaints. There were a number of bodies in New South Wales that would take up a child's complaint with the agency concerned. However, since children were often unwilling to make formal complaints, liaison officers had been appointed to provide assistance in that respect. Furthermore, community visitors regularly went to institutions to seek the views of children. Much was thus being done, but many challenges remained. She agreed on the need for the proper training of adult professionals. Perhaps, too, a change of attitude towards children in general was required in Australia; that applied in particular to the media, which often portrayed them in a very negative way.

76. The CHAIRPERSON said that those questions which the Australian delegation had been unable to answer would be taken up at the following meeting. In conclusion, she recommended that, for its next periodic report, the Australian delegation should include representatives from different States in the Federation. While Committee members were getting a very clear picture of the situation in New South Wales, they might wonder whether it was representative of the whole Commonwealth. Perhaps it was the State which set trends for its counterparts to follow.

The meeting rose at 6 p.m.